



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200945076

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

AUG 27 2009

SETTLEMENT

Legend:

Taxpayer A = XX  
IRA X = XX  
XXX  
Bank B = XX  
Amount D = XX  
Company E = XX  
Individual F = XX  
Individual G = XX

Dear :

This letter is in response to your letter dated June 19, 2009, as supplemented by correspondence dated August 6, 2009, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Bank B and Company E. Taxpayer A further asserts that Amount D has not been used for any other purpose.

Taxpayer A maintained IRA X with Bank B. In August of 2008, Taxpayer A decided to transfer the funds in IRA X, totaling Amount D, to Company E in order to increase his investment return and, for this purpose, Taxpayer A met with Individual F of Bank B who advised Taxpayer A to obtain wiring instructions from Company E so that Amount D in IRA X could be transferred to Company E according to his instructions.

Upon the advice of Individual F, Taxpayer A then contacted Individual G of Company E to inquire if Company E could accept his IRA investment. Individual G advised Taxpayer A in the affirmative stating that his Company E could hold the funds inside the IRA. By letter dated August 3, 2009, Individual G has admitted that he mistakenly advised Taxpayer A that Company E could hold Taxpayer's IRA.

Upon the advice of Individual G of Company E, Taxpayer A, then, on September 2, 2008, contacted Individual F of Bank B again and requested her to wire transfer the funds in IRA X, totaling Amount D, to Company E which she did. Taxpayer A states that Individual F did not explain any additional requirements of this transfer or setting up a self-directed IRA.

Taxpayer A asserts that it was always his intention to keep the funds invested in the IRA and he never intended to take a distribution from the IRA. The sole purpose of the transfer from Company B to Company E was to change the investment strategy of his IRA account. Taxpayer A states that he relied on the advice of Individual F and Individual G and believed that a proper rollover had occurred as he intended. The account at Company E was set up in the name of xxxxxxxxxxxxxxxx IRA and Taxpayer assumed that a proper rollover had been accomplished.

Taxpayer A represents that in April, 2009, when he visited his accountant for the preparation of his Tax return, he learned for the first time that Amount D was not invested inside an IRA, as he intended, due to the incorrect advice of Individual G of Company E and Taxpayer A was told at that time that Company E was not qualified to serve as the custodian of a self directed IRA.

Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60- day period was due to an error committed by Bank B and Company E.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in

gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due

to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount D was caused by an error committed by Bank B and Company E.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with Form 2848 on file in this office.

If you have any questions concerning this ruling, please contact  
xxxxxxxxxxxxxxxxxx SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxxxxx.

Sincerely yours,

*Frances V. Sloan*

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
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